FRONT Report LINE

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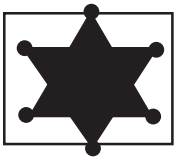
State Supreme Court upholds assault statute

THE MISSOURI Supreme Court upheld the constitutionality of a state statute that defines assault of a law enforcement officer as a crime.



Assault of an officer

Section 565.082.1(3) was challenged by a drunken driver who rammed his pickup into an occupied patrol car, injuring an officer working an accident scene.

The defendant, charged with assaulting an officer, claimed the statute was unconstitutional because there was no rational reason to distinguish between assault on an officer and assault on an ordinary citizen. The court quickly rejected the claim and affirmed the conviction.

"The Supreme Court recognized the state has a special interest in protecting its law enforcement officers," said Attorney General **Jay Nixon**, whose office presented the state's case on appeal.

Court rules officer violated driver's civil rights

FOR THE FIRST TIME in Missouri, a court has ruled that a **constitutional** violation occurs when a police officer attempts to seize a suspect outside his geographic jurisdiction.

State court travels new road in hot pursuit case

In *Brewer v. Trimble*, 902 S.W.2d 342 (Mo.App. S.D. 1995), an appeals court held that officers could be guilty of a civil rights violation under 42 U.S.C. Section 1983 by engaging in pursuits outside their jurisdictions.

An officer followed a speeder outside his jurisdiction and lost contact. He continued to search outside his jurisdiction until he found

SEE HOT PURSUIT, Page 2

Alcohol-related offenses focus of seminar

Conference topics

- Processing the Crash Scene
- Accident Reconstruction Methodologies
- Case Studies
- Legal Issues in Alcohol Related Crimes
- Overview of Toxicology
- Overview of Implied Consent Laws
- Forensic Pathology in Vehicular Homicide Cases
- Kentucky School Bus Crash

A DWI/VEHICULAR HOMICIDE Conference will be held Jan. 25-26 for law enforcement officers and prosecutors at the Lake of the Ozarks.

The seminar will bring together law enforcement officers and prosecutors as they learn techniques in investigating alcohol-related offenses, says MOPS Executive Director **Liz Ziegler**.

The program is an extension of a specialized vehicular homicide trial school held earlier this year for prosecutors.

The Office of Prosecution Services and the Sheriffs and Police Chiefs associations are sponsoring the conference, which will be held at the Lodge of Four Seasons.

Attendees can reserve hotel rooms by calling the lodge at 800-843-5253. The room rate is $49.

To register for the conference, call MOPS at 314-751-0619 by Dec. 29. Cost is $30. Checks should be made payable to Lodge of Four Seasons. Lunch will be provided both days.

Attorneys who complete the course will receive 14.1 hours of MCLE. Conference sponsors are applying for law enforcement accreditation.

Grant pays to improve criminal history reporting

A $1.7 MILLION grant made possible by the Brady Bill will be used to improve criminal history records in Missouri.

The grant monies will provide for database enhancements, systems interfaces and equipment upgrades as well as education and training on reporting procedures.

A Federal Grant Task Force was formed to help develop grant-funded projects for the improvement of criminal history records in Missouri.

The task force is composed of representatives from the Police Chiefs and Sheriffs associations, Office of Prosecution Services, Office of State Court Administrator, Department of Public Safety and the Missouri Central Records Repository of criminal records.

Training seminars will be held at several locations next year. Training will emphasize proper criminal history reporting procedures. State and federal requirements will be addressed as well as local needs.

A brochure/registration form will be mailed to all criminal justice agencies and courts.

To register, contact **Bev Case** at the Office of Prosecution Services, 314-751-0619.

1995 TRAINING SEMINARS

Jan. 9	Dexter	Hickory Lodge
Jan. 10	Cape Girardeau	Holiday Inn
Jan. 16	Springfield	Ramada
Jan. 17	Joplin	Ramada
Jan. 18	Nevada	Teen Center
Jan. 23	West Plains	Ramada
Jan. 24	Rolla	UMR
Feb. 1	Lake Ozark	Holiday Inn
Feb. 2	Jefferson City	Runge Nature Center
Feb. 7	Warrensburg	Best Western
Feb. 8	Independence	Howard Johnson
Feb. 9	Kansas City	Holiday Inn
Feb. 13	Park Hills	Roseners Inn
Feb. 14	Union	City Hall
Feb. 15	St. Louis	Holiday Inn Westport
Feb. 20	Hannibal	Holiday Inn
Feb. 21	St. Peters	Holiday Inn
March 5	Kirksville	Days Inn
March 6	Chillicothe	Grand River Inn
March 7	Moberly	Ramada Inn
March 12	Maryville	Country Kitchen
March 13	St. Joseph	Days Inn

HOT PURSUIT

CONTINUED from Page 1

and ticketed the driver for speeding.

The driver filed a civil rights claim, alleging a Fourth Amendment violation. The jury found the officer violated the motorist's constitutional rights by making a stop outside his jurisdiction and awarded nominal damages.

On appeal, the court affirmed the verdict, concluding the officer had no authority to apprehend a violator outside his city limits.

While the courts have found such actions to be a state tort in other cases, the determination that such stops can also be a constitutional violation, and thus violate federal law, greatly expands the potential liability of officers. If found guilty, an officer must pay the plaintiff's attorney fees and any damages the jury may award.

In this case, the officer did not assert he was in hot pursuit pursuant to Section 544.157, which allows pursuit outside geographic limits if there is probable cause to believe a violation has occurred.

The officer could not claim any authority to have made the stop based on the hot pursuit law. The statute states that the pursuit "shall be terminated once the pursuing peace officer is outside of his jurisdiction and has lost contact with the person being pursued."

Front Line Report is published on a periodic basis by the Missouri Attorney General's Office, and is distributed to law enforcement officials throughout the state.

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UPDATE: CASE LAWS

MISSOURI SUPREME COURT

State v. William H. Kerr, Jr.
No. 77482
Mo.banc, Sept. 19, 1995

The defendant challenged the constitutionality of assault of an officer pursuant to Section 565.082.1(3) on the basis the statute is overbroad because it is not restricted to acts that occur while law enforcement officers are on duty or to acts related to their duty.

Because the defendant conceded the officer was performing official duties when injured, the statute was not unconstitutional in its application to the defendant. A defendant has no standing to raise other hypothetical instances in which the statute might be unconstitutionally applied.

State v. Keith L. Allen
No. 77366
Mo.banc, Sept. 19, 1995

Section 578.360, which defines hazing, is not unconstitutionally vague. Hazing includes beating, which is not an ambiguous term. The statute also does not violate the First Amendment right to associate. It does not limit any fraternity or organization from meeting at any place or time. Members of an organization have no constitutional right to endanger the health or safety of current or potential members by physically beating them.

Also, a rational basis exists for the legislature's failure to address hazing at the secondary education level. The legislature could reasonably conclude that the threat of criminal liability was appropriate to protect students from hazing by organizations and colleges and universities, when parents cannot easily offer protection from a distance.

MO. SUPREME COURT TRANSFER

State v. Kenneth L. Mayo
No. 51459
Mo. App., W.D.

The Supreme Court granted transfer on the issue of whether the double jeopardy clause of the U.S. Constitution bars a DWI prosecution under Section 577.010.1, RSMo 1994, if the defendant's drivers license already has been suspended under Section 302.505.1, RSMo 1994, as a result of the same incident that initiated the prosecution.

The court also will consider whether a license suspension under provisions of Section 302.505.1 is remedial in nature, i.e. whether it is designed to remove intoxicated drivers from highways, or whether it is punitive in nature, and precludes a criminal prosecution for conduct arising from the same incident.

SOUTHERN DISTRICT

State v. Glen Edward Bringleson
No. 18704
Mo.App., S.D., Aug. 30, 1995

Two Greene County deputies arrested the fleeing defendant in adjoining Dade County after a radio call requested help. They seized the defendant and waited for the Dade County sheriff to arrive.

Under Section 57.111, the deputies had the power of arrest because the sheriff requested their help. Also, under Section 544.216, the sheriffs were authorized to arrest the defendant based on reasonable grounds to believe the defendant had violated a state law. The court found sufficient reasonable cause to believe the defendant committed attempted robbery in the first degree.

State v. Mark C. Langley
No. 19779
Mo. App., S.D., Sept. 11, 1995

The court reversed the involuntary manslaughter case based on driving under the influence of drugs. Before trial, the defendant filed motions to exclude the drug test and to dismiss on grounds that the doctor failed to follow the required procedures for blood testing under Section 577.020-577.041 and 19 CSR 20-30.080.

The state erred in allowing the test results to be used as evidence: It failed to meet its burden of showing absolute and literal compliance with Section 577.026 and 19 CSR 20-30.080. Pursuant to Section 577.026, the Health Department has set out approved methods to test blood for drugs in 19 CSR 20-30.080.

State v. Kenneth Mishler
No. 19848
Mo.App., S.D., Nov. 1, 1995

There was sufficient evidence of the defendant's conviction of possession of a controlled substance.

During a stop, a trooper noted that the defendant leaned out of sight on the passenger side of the vehicle. A bag, found in a slit between the front seats, contained about four grams of methamphetamine.

The defendant argued there was insufficient evidence of possession. Although not the car's owner, he had use of the car for six hours that day and had sole use during the stop. The drugs were found either between the front seats or under the driver's seat, both of which were accessible.

The defendant was nervous during the stop. He locked the car and was adamant about giving the keys to his wife to move the car from the scene. Action resembling an effort to conceal constitutes evidence reasonably implying consciousness of guilt.

UPDATE: CASE LAWS

State v. Said A. Madani
No. 18401
Mo.App., S.D., Nov. 7, 1995

There was sufficient evidence of the defendant's guilt of passing a bad check. The defendant wrote two insufficient checks for two vehicles purchased at an auction. The defendant returned, stating he had been notified about bad checks and wanted to get them.

The defendant wrote a new check for the total amount on a different bank. It also was returned. It was stipulated the defendant had opened the new account with a balance of $185. No other deposits were made and the account was closed. The defendant argued he used this check as a promissory note and the auction gave him an extension to pay.

The defendant argued the evidence was insufficient to support the finding that he passed the check with purpose to defraud and there was no evidence that he received anything of value.

Section 570.120 does not require a check be given to procure something of value or to pay a past due debt. The statute requires only that a bad-check passer do so with purpose to defraud.

Viewed most favorably to the state, evidence showed the defendant could have been prosecuted for violating Section 570.120. He undeniably obtained something of value. When he exchanged the new check for the two prior checks, he obtained possession of evidence that would have been vital to prosecute. Also, evidence showed the auction accepted the check hoping it would clear the bank.

The jury could have reasonably inferred the defendant passed the check as part of a scheme to stall the auction and frustrate prosecution, thereby manifesting a purpose to defraud.

State v. Kenneth Spurgeon
No. 20036
Mo.App., S.D., Sept. 27, 1995

A police officer was authorized to stop the defendant's vehicle under *Terry v. Ohio*, and *Berkemer v. McCarty*. The officer recognized the defendant as the driver and knew eight months earlier the defendant's drivers license was under revocation and the revocation would last for at least one year. Knowing this, the officer was authorized to stop the defendant and investigate whether he was driving without a valid license. He also discovered the defendant was intoxicated, and was authorized to arrest him for DWI.

WESTERN DISTRICT

State v. Robert L. Baker
No. 50050
Mo. App., W.D., Oct. 3, 1995

There was insufficient evidence of the defendant's guilt of possession of cocaine. The defendant argued he did not possess any measurable or visible amount of cocaine and the sole evidence relied on by the state was burned cocaine residue on a pipe evidencing prior cocaine use.

The state conceded there was no visible or measurable unused or unburned cocaine in or on the pipe. The conviction was based solely on burned cocaine residue left from past use. The state argued this evidence adequately shows current knowing possession of cocaine.

During a search of the defendant, an officer discovered what appeared to be a crack pipe. He also found another pipe in the vehicle. The officer requested the lab to test for cocaine residue **if possible**. The officer arrested the defendant only for possession of drug paraphernalia. He had found no cocaine and was unsure whether there was sufficient cocaine residue on other pipes to be tested.

The defendant admitted that officers had found a pipe in his jacket but it was not his. He said he bought the pipe from another man. He also admitted smoking crack in the past and that he had last smoked crack at about 4 p.m.

Highway Patrol Crime Lab testers did not see any hard matter within the pipes prior to testing, but noted burned residue on the pipes. The lab was unable to obtain any weight of cocaine on the pipe and noted no visible cocaine particles in a solvent wash. However, further testing determined that the residue washed out of the pipes was cocaine.

The state charged the defendant with possession of a controlled substance.

State v. Ernest G. Dudley
No. 48385
Mo. App., W.D., June 6, 1995

In a prosecution for possession of codeine, the court did not err in admitting evidence of a bag containing a green leafy substance purporting to be marijuana found during the search. The state is required to prove that the defendant knowingly and intentionally possessed the illegal substance and was aware of its character and legal nature.

Evidence of the defendant's involvement with other drugs at the time he possessed the substance has been held to be admissible to show his requisite intent and knowledge of the nature of the substance possessed.

UPDATE: CASE LAWS

State v. John Boston
No. 48026
Mo. App., W.D., Sept. 26, 1995

There was sufficient evidence of the defendant's guilt of first-degree murder although the defendant was an accomplice.

The statute requires that the defendant, as an accomplice, have deliberated on the crime. There was ample evidence to support the jury's finding of deliberation.

The defendant and friends, all armed, accompanied his sister to a party where she and the victim threatened each other. The defendant challenged guests to a fight and also pointed his weapon toward the victim and others. The defendant fired repeatedly into the house toward a window.

The defendant argued he did not deliberate because he **only** shot into the side of the house. That argument more squarely addressed the question of intent to kill rather than deliberation, although intent to kill is found from the act of pumping round after round toward the window of a house full of people.

It was irrelevant the defendant did not fire the fatal shot — conviction was based on accomplice liability.

State v. Derrick White
No. 49177
Mo. App., W.D., Nov. 14, 1995

The trial court did not err in denying a motion for mistrial based on the state's use of criminal records of venirepersons in exercising peremptory challenges. The court recognized Missouri cases which hold that the state is allowed to use the arrest records of persons who may sit as jurors in criminal cases. The prosecution is not obligated to disclose information absent a statutory provision making the discovery a matter of right of the defense. No evidence was presented that the defendant was prejudiced because the prosecution did not provide them with the arrest records.

EASTERN DISTRICT

State v. Rodney Sloan
No. 66753
Mo. App., E.D., Oct. 24, 1995

The trial court erred in refusing to allow a defense expert to testify about interview techniques used by investigators in a child abuse case. The trial court sustained the state's motion in limine to exclude the testimony after it found the evidence would have been a "commentary on the veracity of the witness, and this is always within the province of the jury."

While the issue was one of first impression in Missouri, the court looked to cases in other states that have allowed expert opinions on improper or suggestive techniques used by individuals investigating allegations of child sexual abuse.

The court ruled this evidence was admissible.

State v. David Gary
No. 65495
Mo. App., E.D., Nov. 14, 1995

The defendant was convicted of first-degree murder of an officer after the defendant slammed his truck into the police cruiser at about 102 mph.

The defendant presented a defense of depression and lack of deliberation. The defendant argued the trial court erred in admitting evidence relating to his consumption of alcohol he possessed.

State v. Erwin, 848 S.W2d 476 (Mo. banc 1993), relied on by defendant, prohibits evidence of voluntary intoxication only if that evidence is offered to negate a mental element of the offense.

Evidence about appellant's alcohol consumption was relevant to a defense of diminished responsibility. Under the diminished capacity doctrine, the defendant accepts criminal responsibility but seeks conviction of a lesser degree because the mental disease or defect prevented the defendant from forming the mental element of the higher degree of the crime.

A defense of diminished capacity, because the accused is incapable of forming the mental element necessary to commit a crime, is based on evidence of a mental disease or defect as defined in Section 552.010.

Alcoholism without a psychosis is not a mental disease or defect. Thus the doctrine of diminished capacity is not available where the lack of capacity to form the mental element resulted from voluntary intoxication — voluntary intoxication alone does not constitute a mental disease or defect. A psychologist's testimony supported the defendant's theory of diminished capacity.

Accordingly, the prosecutor was permitted to admit evidence of intoxication to undermine that defense.

While a jury is prohibited from considering voluntary intoxication to negate a mental element of the crime charged, evidence of voluntary intoxication may be admitted to explain conduct purported to demonstrate a mental disease or defect.

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Cape sting clears 160 warrants

A THREE-DAY STING operation conducted by Attorney General **Jay Nixon**, Cape Girardeau County Sheriff **John Jordan** and Scott County Sheriff **Bill Ferrell** netted 101 people and collected more than $226,000 in bail money posted.

Dubbed Operation Lam Scam, the sting targeted individuals sought by the sheriffs on a variety of charges, including sexual assault, stealing, drug possession and non-support.

The sting cleared 160 warrants, 103 for felony charges.

The AG's Office sent a letter from the fake Missouri Department of Consumer Services, informing fugitives they were eligible for cash awards as the result of a class-action lawsuit brought by the AG's Office. The fugitives were asked to set up appointments to collect their checks.

A temporary claims office was set up in Cape Girardeau. Undercover officers acted as office staff. Other deputies waited in a back room, ready to arrest, book and jail fugitives.

"This has been an extremely efficient operation and a safe operation," Jordan said. "Tracking down and apprehending a fugitive is one of the most dangerous aspects of our work in law enforcement."

The sting cost less than $3,000 for the three agencies.

"The Attorney General's Office provided the logistical support and behind-the-scenes resources to lend credibility to the project and get it up and running," Ferrell said.

This was the fourth sting conducted by the attorney general in conjunction with sheriffs. To date, 779 warrants have been cleared. Similar operations were conducted in Jefferson, Clay and Jasper counties.

OPERATION LAM SCAM

The Cape Girardeau and Scott County sheriff's departments cleared 160 warrants in a sting operation.